IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.572 OF 2005

IN

SUIT NO.2658 OF 2003

...

SICOM Limited ...Plaintiff

v/s.

Mr.Kailashchand Chamaria

Mr.Vinod Kumar M. Gadia ...Defendants

...

Mr.Prakash Punjabi i/b Prakash Punjabi & Co. for the Plaintiff.

Mr.Abhay Patki i/b Joseph & Associates for Defendants in support of Notice of Motion.

...

CORAM: D.K.DESHMUKH, J.

DATED: 18TH MARCH,2006

P.C.:

This Notice of Motion is taken out by the Defendant for setting aside the order dated 19-1-2005 passed in summons for judgment. The court granted the summons for judgment and passed a decree in favour of the Plaintiff, because though the summons for judgment was served in February, 2004. No affidavit in reply was filed by the Defendant. The lawyer for the Defendant was also absent when the summons for judgment was decided. In the affidavit filed in support of the motion though there is an explanation why the lawyer was not present in court, there is no explanation to be found as to why reply was not filed to the summons for judgment, which was received by the Defendant in February, 2004.

2. Perusal of provisions of Rule 3 of Order 37 shows that after summons for judgment is served by the Plaintiff on the Defendant, the Defendant has to file an affidavit seeking leave of the court to defend the suit within 10 days of the service. If the Defendant does not apply for leave to defend within 10 days or

does not apply for condonation of delay in making an application for leave, the Plaintiff becomes entitled to judgment. Therefore, it is obvious that the court granted decree in favour of the Plaintiff because the Defendant did not apply for leave to defend within 10 days and also did not apply for condonation of delay in making an application for leave to defend. In the absence of any explanation given by the Defendant as to why the application for leave was not made as per the requirements of provisions of Order 37, it is not possible to set aside the order passed by the Court in the summons for judgment. Motion is, therefore, disposed of.

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